

STATE OF IOWA  
PROPERTY ASSESSMENT APPEAL BOARD

|   | ORDER  |
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| <b>Hilda M. Kramer</b><br>Petitioner-Appellant,<br><br>v.<br><br><b>Dubuque County Board of Review,</b><br>Respondent-Appellee. | <b>Docket No. 09-31-0003</b><br><b>Parcel No. 142810001</b>  |
|   | <b>Docket No. 09-31-0004</b><br><b>Parcel No. 142810004</b>  |
|   | <b>Docket No. 09-31-0005</b><br><b>Parcel No. 1428300001</b> |
|   | <b>Docket No. 09-31-0006</b><br><b>Parcel No. 1429400001</b> |
|   | <b>Docket No. 09-31-0007</b><br><b>Parcel No. 1429400002</b> |
|   | <b>Docket No. 09-31-0008</b><br><b>Parcel No. 1429400003</b> |
|   | <b>Docket No. 09-31-0009</b><br><b>Parcel No. 1429400005</b> |

On October 14, 2009, the above captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. The Appellant, Hilda M. Kramer, designated Cindy S. Kramer as her representative. The Dubuque County Board of Review designated Assistant County Attorney Lyle Galliart as its legal representative. Both parties participated at the hearing and submitted evidence in support of their positions. The Appeal Board having reviewed the entire record, heard the testimony, and being fully advised, finds:

### *Findings of Fact*

Hilda Kramer, owner of property located in Peosta, Iowa, appeals from the Dubuque County Board of Review regarding her 2009 property assessments. The appeal includes seven agriculturally classified parcels totaling 278.09 acres. Parcel number 1428100001 includes an agricultural building, a dwelling, and 39.5 acres of agricultural land. The remaining parcels are vacant and used for agricultural purposes. Assessments for each are noted in the following table.

| Docket #     | Parcel #   | Site Size | 2009 Assessment |          |          |                  |
|--------------|------------|-----------|-----------------|----------|----------|------------------|
|              |            |           | Building        | Dwelling | Land     | Total            |
| 09-31-0003   | 1428100001 | 39.5      | \$22,362        | \$27,000 | \$50,511 | \$99,873         |
| 09-31-0004   | 1428100004 | 40        | \$0             | \$0      | \$51,676 | \$51,676         |
| 09-31-0005   | 1428300001 | 40        | \$0             | \$0      | \$39,181 | \$39,181         |
| 09-31-0006   | 1429400001 | 40        | \$0             | \$0      | \$42,079 | \$42,079         |
| 09-31-0007   | 1429400002 | 40        | \$0             | \$0      | \$30,095 | \$30,095         |
| 09-31-0008   | 1429400003 | 40        | \$0             | \$0      | \$46,725 | \$46,725         |
| 09-31-0009   | 1429400005 | 38.59     | \$0             | \$0      | \$31,240 | \$31,240         |
| <b>Total</b> |            |           |                 |          |          | <b>\$340,869</b> |

Kramer seeks total relief of \$126,669, contending that the total value of the combined parcels should be \$214,200. All of the relief sought is in the land value. The building and dwelling values are not contested.

Kramer protested to the Board of Review on the ground that there is an error in the assessment, stating the parcels are “over-assessed.” In response to her protest, the Board of Review denied the appeal stating that “the property is assessed at productivity value as provided by the Iowa Code” and that “insufficient evidence to prove a clerical or calculation error existed.” While the Board of Review does not specifically address that the property is assessed for more than the value authorized by law, it is clear from the petition, certified record, and testimony to this Board, that this ground is the primary ground of protest.

To this Board, Kramer reasserted her protest citing that there is an error in the assessment under Iowa Code section 441.37(1)(d) and plainly stating that the error is “all parcels are over-assessed” or in essence that the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b). Both grounds will be considered by this Board, as both were protested at the local level.

Cindy Kramer, Hilda’s daughter, testified at the hearing. Ms. Kramer provided several pieces of evidence, including but not limited to: articles citing a drop in farmland values; data from the National Agricultural Statistics Service; and Census data from Dubuque County from 2004-2005 and 2006-2007.

Ms. Kramer asserts that the production values are overstated for the subject parcels. She also believes that land formations such as a creek running through the property, which limits access to some areas, as well as the lay of the land and flooding have not been appropriately considered. Ms. Kramer asserts that the calculations are “manipulated” and that the calculations include non-tillable timber, pasture, and rough land, which should reduce the value. Kramer, in a round-about way, also contended that county-wide building values were miscalculated and resulted in a higher land value for her property. We find Ms. Kramer appeared to be knowledgeable about productivity and soil adjustments; however, she did not entirely understand assessment methods of agricultural land.

David Kubik, Dubuque County Assessor, testified on behalf of the Board of Review. Mr. Kubik explained that the county utilizes a direct dollar per Corn Suitability Rating (CSR). Only two spot symbols, for gravel and sand, of one-third an acre each were noted on the soil calculation reports covering the entire combined site. Mr. Kubik stated that the soil survey takes into consideration such conditions by virtue of built-in factors for slope and erosion which determine suitable land use. As



such, he testified that he did not consider any further reduction for streams or other rough land as he had no reliable and market-accepted method of making adjustments.<sup>1</sup>

Kubik also testified that 2009 values for the County were determined by combining the County and City of Dubuque parcels and calculating the same dollar per CSR value for both jurisdictions.<sup>2</sup> What the two jurisdictions did “was to make the city and the county one unit and equalize them together.” Kubik believed this methodology was equitable and it was a tool to bypass traditional equalization, which we note is a function of the director of the Department of Revenue. *See* Iowa Code §§ 421.17(2), 441.49. Dubuque County and the City of Dubuque are separate assessing jurisdictions by law. *See* Iowa Code § 441.1 (creating in every county an office of the assessor and permitting cities with a population of ten thousand or more to have its own separate assessor). Although the assessor asserted the Department of Revenue granted permission to combine these assessing jurisdictions, the evidence to support the statement does not do so.<sup>3</sup> It appears to us that the correspondence provided by the Board of Review is merely emails between Tax Administrator Dale Hyman and Chief Appraiser Cary Halfpop, in the Department of Revenue, the County Assessor, and the City Assessor Rick Engelken discussing ag building factor calculations. In our opinion, these emails do not permit the two to combine, but do appear to approve of the two jurisdictions using the same dollar-value-per CSR.<sup>4</sup>

We find nothing in Iowa law to permit combining assessing jurisdictions for agricultural assessments, either by combining total acreage or artificially using the same dollar per CSR. In fact, Iowa Administrative Code rule 701-71.3, governing valuation of agricultural real estate, is replete with

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<sup>1</sup> We note these parcels were before this Board in a protest filed by Kramer for the January 2007 assessment cycle. In that case, we suggested the Assessor personally inspect the parcels and determine if adjustments were necessary.

<sup>2</sup> There are eight cities in Iowa that have separate assessor’s offices: Ames, Cedar Rapids, Clinton, Davenport, Dubuque, Iowa, Mason, and Sioux City. To Kubik’s knowledge the City of Sioux City and Woodbury County may have similarly combined their agricultural assessments in 2009.

<sup>3</sup> Following the testimony at hearing, this Board requested the County to provide the documentation that authorized combining the assessment jurisdictions for agricultural valuations.

<sup>4</sup> Following the ag formula, it is necessary to note that it nearly impossible that any two assessing jurisdictions would arrive at or use the same dollar value per CSR due to the many variables that go into calculating this figure.

references to singular or specific assessing jurisdictions. This rule states, “[t]he assessor shall determine the actual valuation of agricultural real estate *within the assessing jurisdiction*” (emphasis added). Further, the productivity value for agricultural buildings and structures is determined by the assessor

developing an ‘agricultural factor’ *for their jurisdiction*. The agricultural factor for each jurisdiction shall be the product of the ratio of the productivity and net earning capacity value per acre as determined under subrule 71.12(1) over the market value of agricultural land *within the assessing jurisdiction*. The resulting ratio is then applied to the actual value of the agricultural buildings and structures as determined under the Iowa Real Property Appraisal Manual prepared by the department. The agricultural factor shall be applied uniformly to all agricultural buildings and structures *in the assessing jurisdiction*.

*Id.* (emphasis added); *See also* Iowa Code §§ 421.17, 421.30, 441.17, 441.48, & 441.49 (referencing specific assessing jurisdictions). Essentially, combining assessing jurisdictions does not only defeat the purpose of equalization, it could result in inequitable assessments.

We have noted that Dubuque County and the City of Dubuque are separate assessing jurisdictions. By combining the assessing jurisdictions, trouble results. The rules require agricultural assessments be determined based on the following method on a jurisdictional basis:

The first step in that process is to calculate the total crop-producing value for the county. The assessor begins this process by examining the county's per-acre crop-producing value as computed by the Iowa Department of Revenue and Finance. That agency reviews each county's crop yields and gross crop production income over a five-year period. The county's total gross income is then reduced by the aggregate production costs. The agency then adjusts this net figure to account for real estate taxes and, then, to comport with Iowa Code section 441.21(1)(e), capitalizes the resulting value at the rate of seven percent. The assessor arrives at the county's total crop-producing value by multiplying the per-acre crop-producing value derived by the Iowa Department of Revenue and Finance by the total number of crop-producing acres in the county. This figure represents the total productivity value of both land and improvements within the county.

In order to obtain a valuation for the improvements (buildings) on the land, the assessor values the improvements on each separate parcel other than dwelling houses in the county at market value (derived on the basis of replacement cost). This valuation is then adjusted to conform to the ratio between the fair market value of all agricultural real estate in the county and the productivity valuation of such real estate that has been computed pursuant to rule 701-71.12(1). Dwelling houses are valued as ordinary real property. This adjusted value constitutes the assessed valuation of the agricultural



buildings on each individual tract. The total valuation of all buildings within the county, so derived, is then subtracted from the total crop-production value of all land and buildings as computed under rule 701-71.12(1) to establish the aggregate value of the bare land.

This aggregate value is spread to each parcel to be assessed in proportion to the ratio of the corn-suitability rating of the particular tract to the sum of all corn-suitability ratings within the county. That computation establishes the valuation of the land on each parcel and is stated separately from the valuation of the buildings on that parcel. The separate assessment of land and buildings is dictated by Iowa Code section 441.21(7) (renumbered as section 441.21(6) in Iowa Code 2001).

Apportioning the county-wide productivity valuation of the bare land to each parcel within the county in accordance with the corn suitability rating of each parcel is consistent with Iowa Code section 441.21(1)(f), which provides: In counties or townships in which field work on a modern soil survey has been completed since January 1, 1949, the assessor shall place emphasis upon the results of the survey in spreading the valuation among individual parcels of such agricultural property.

*H & R Partnership v. Davis County Bd. of Review*, 654 N.W.2d 521, 525-526 (Iowa 2002); see also Iowa Administrative Code r. 701-71.3, 701-71.12. While the initial number for each jurisdiction in this case was the same: the county's dollar-per-acre actual value of agriculture, which would be used by both the County and City, all other inputs are likely to vary. In this case, Kubik testified that the dollar-per-CSR in the County and City were different. He stated that the County's dollar-per-CSR was \$12.94, but the City's value was approximately 20% higher. In the end, he resolved this difference by using approximately \$19 per CSR. Kramer was correct – her values were inflated by combining these values. Essentially because the City's dollar-per-CSR was higher, the agricultural property in the County increased to offset the difference resulting in the County's property owners bearing the burden of over-assessment.

Further evidence that combining the jurisdictions was improper is that the record indicates the County ag factor was 92%, whereas the City ag factor was 28%. Another problem with combining the County and City assessing jurisdictions, in this case, is that the County was using the 1970 *Iowa Manual*, and the City was using the 2008 *Iowa Manual* – more than 30 years difference in the two manuals. This results in inequity because the old *Iowa Manual* would require a 92% upward

adjustment to arrive at current property values to reflect equitable values in the 2008 *Iowa Manual* used by the City. Although Kubik believed that using this devised method arrived at the same “spot” as separately assessing the properties would have, we do not believe this is probable or possible.

We find Kubik lacked credibility about what permission, if any, the County and City Assessors had to combine the separate assessing jurisdictions, and whether adjustments could be made to Kramer’s property given the *Iowa Manual* permits such adjustments.

Although the County and City assessing jurisdictions acted contrary to law by combining for agricultural assessments, there is not sufficient evidence to determine the correct value of Kramer’s property. In this case, we do not have all of the agricultural data necessary to recalculate the assessment. Given the agricultural classification of the parcels and the fact that not only Ms. Kramer’s agricultural assessment, but likely all of the agricultural assessments in the County and City were incorrectly calculated because the two assessing jurisdictions combined, it is regrettable that we are unable to make any adjustment to her value.

### ***Conclusions of Law***

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment*



*Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). Section 441.37(1)(d) is not limited solely to clerical or mathematical errors. The plain language of section 441.37(1)(d), on which the appellant rests his claim, allows a protest on the ground “[t]hat there is an error in the assessment.” § 441.21(1)(d). The administrative rule interpreting this section indicates that the error may be more than what is alleged by the Board of Review. While “[a]n error in the assessment *would most probably* involve erroneous mathematical computations or errors in listing the property[,] [t]he improper classification of property also constitutes an error in the assessment.” Iowa Administrative r. 701-71.20(4)(b)(4) (emphasis added). This language suggests that other errors may constitute grounds for appeal pursuant to section 441.37(1)(d).

Iowa Code section 441.21(1)(e) provides that agricultural real estate be assessed at its actual value by giving exclusive consideration to its productivity and net earning capacity. In determining the productivity and net earning capacity of agricultural real estate, the assessor is required to use available data from Iowa State University, the Iowa crop and livestock reporting service, the Department of Revenue, the *Iowa Real Property Manual* and to consider the results of a modern soil survey, if completed. Iowa Code § 441.21(1)(f); Iowa Administrative Code r. 701-71.3. Kramer’s parcels all carry an agricultural classification, which requires that they are valued using the agricultural formula method. *See* Iowa Admin. Code r. 701-71.3, 701-71.12.

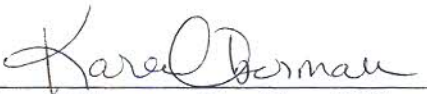
Evidence did show that Kramer’s assessment was likely calculated in error, particularly by combining values between the County and the City resulting in increased land values for the County, as previously discussed. However, because we do not have sufficient information to determine what




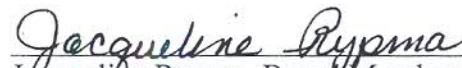
the correct assessment should be and because all values for the County and City were likely incorrectly calculated, we must regrettably and reluctantly affirm the value as determined by the Board of Review.

THE APPEAL BOARD ORDERS the assessment of Hilda Kramer's seven parcels for the January 1, 2009, assessment are affirmed.

Dated this 19 day of January, 2010

  
Karen Oberman, Presiding Officer

  
Richard Stradley, Board Member

  
Jacqueline Rypma, Board Member

Cc:

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| Certificate of Service  |  |
| The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>1-19</u> , 2010 |  |
| By:   | <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX           |
|   | <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier   |
|   | <input type="checkbox"/> Certified Mail <input type="checkbox"/> Other               |
| Signature   |  |

